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Chairperson: ..... Ms. Majodina

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The meeting was called to order at 3 p.m.

Consideration of reports submitted by States parties under article 40 of the Covenant

Fourth periodic report of Togo (CCPR/C/TGO/4, CCPR/C/TGO/Q/4 and Add.1)

1. *At the invitation of the Chairperson, the members of the delegation of Togo took places at the Committee table.*

2. **Ms. Wilsen-de Souza** (Togo), introducing the State party's fourth periodic report (CCPR/C/TGO/4), said that it had been prepared by the inter-ministerial drafting committee for initial and periodic reports on human rights in collaboration with the Country Office of the Office of the United Nations High Commissioner for Human Rights (OHCHR) in Togo, the National Human Rights Commission and civil society. Difficulties encountered in preparing the report included lack of relevant and recent data and insufficient resources.

3. Firmly committed to democracy, the Government of Togo had made a number of reforms since the presidential election of 2005 that had earned it the renewed trust and support of the international community. Following consultations with the European Union, it had entered into 22 undertakings aimed at strengthening democratic institutions and respect for human rights and a State based on the rule of law. It had also initiated a national political dialogue that had resulted in the signing of the Global Political Accord in August 2006; implementation of that agreement, as well as another signed by her Government and OHCHR for the establishment of an OHCHR Country Office in Togo, had paved the way for the peaceful holding of legislative elections in October 2007.

4. Togo had adopted a number of human rights instruments since the submission of its last periodic report. Provisions of those instruments, as well as of the Covenant, dealing only with citizens' rights could be invoked before Togolese courts, which were required to apply them. On the other hand, those provisions defining an act or a fact as an offence could not be applied until they were brought into conformity with domestic law and appropriate punishments were established at that level. Training on the provisions of the Covenant had been organized for lawyers, judges and members of the defence and security forces.

5. Act No. 2005-04 of 9 February 2005 confirmed the independent status of the National Human Rights Commission. Complaints could be submitted by any person who believed his or her rights had been violated, as well as third persons or non-governmental organizations (NGOs). In April 2008, the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights had accredited the National Human Rights Commission with A status, thus validating its compliance with the Principles relating to the status of national institutions (Paris Principles).

6. Human rights violations during the presidential election of April 2005 would be at the heart of the work of the Truth, Justice and Reconciliation Commission. The Commission was currently examining statements made during hearings in order for the Government to settle definitively any issues of participation in public affairs and incitement to racial hatred. The Commission must conclude all investigations and hearings before any proceedings were initiated. While the Commission's work did not preclude prosecutions, it could not replace a judicial process aimed at establishing individual criminal responsibility.

7. The promotion of women and gender equality were key objectives under the 2010 programme of action submitted by the Prime Minister of Togo to the National Assembly. Such objectives were to be achieved through the consolidation of laws protecting women against gender-based violence and, more broadly, through educational initiatives aimed at keeping girls in school. The Government was particularly concerned with the situation of rural women and hoped to ease their burden through the introduction of technology; access to land, water and agricultural training; and assistance for the creation of cooperatives and agri-food associations. The Government also sought to empower women professionally. Thus, the most recent competitive examinations for civil servants had led to the hiring of women in areas traditionally reserved for men, such as the police, prisons and the army. Women remained underrepresented, however, in decision-making positions: just 7 of 31 posts in the Togolese Administration were occupied by women, and a mere 9 of the 81 seats in the National Assembly belonged to women.

8. The lack of computerized data made it difficult to collect reliable data on the complaints filed with regard to violence against women; nevertheless, the non-governmental association Groupe de Réflexion Femme Démocratie had cited 78 cases of violence against women in 2009. Although a raft of new legislation, including the new draft Criminal Code, contained provisions aimed at better protecting the rights of women, Togolese women continued to suffer human rights violations, particularly as a result of domestic violence and discriminatory inheritance laws.

9. In June 2009, the National Assembly had adopted a law abolishing the death penalty in Togo through the commutation of all death sentences to life imprisonment. Furthermore, all acts of torture were strictly prohibited, although practical steps were needed to make that provision fully effective. Thanks to the work of human rights organizations and the Ministries of Security and Defence, incidents of torture in detention centres had decreased considerably; a few isolated cases during preliminary investigations should nevertheless be noted. Such incidents could be attributed largely to meagre resources and lack of awareness of the relevant legislation. Training for law enforcement officials and forensic doctors had been designed to include international human rights law, in particular on the prohibition of torture. Events during the 2005 elections, however, had proven the need for ongoing training; the Government therefore regularly organized awareness-raising events for law enforcement officials and civilians in respect of human rights principles and the prohibition of torture, and planned to establish a national mechanism on the prevention of torture.

10. Recognizing that Togo was a country of origin, transit and destination for child trafficking, the Government had taken steps to address the problem through legislation, social programmes, and prosecution of the perpetrators. In addition, it planned to establish a national social protection policy and to set up a cash transfer pilot project in order to deal with the underlying issues of poverty.

11. With regard to the right to liberty and security of the person, Togo had a large number of privately owned media that provided information on a wide range of topics and in many languages. The Constitution provided for the right to refer any allegedly arbitrary arrest or custody to the relevant judicial authority; it was important to note, however, that that authority had not been established by law. Under the preliminary draft Code of Criminal Procedure, the president of the court or the judge designated by the president acquired competence to exercise habeas corpus.

12. In Togolese law, charging was governed by the Code of Criminal Procedure. Arresting an individual for civil or commercial debt was formally prohibited. Nevertheless, persons detained for offences associated with civil or commercial debt could be found in places of detention. For the most part, offences such as breach of trust or fraud were presented by detainees as debt. The absence of an exhaustive list of contracts or conventions that might not be described as fraudulent sometimes led officials or judicial police officers to misunderstand civil or commercial situations as criminal offences, describing them as fraud or breach of trust.

13. To rectify that shortcoming, a series of training programmes for judicial police officers and constables, both on the procedure for preliminary investigation and on techniques for the interpretation of texts and description of facts, was being conducted as part of the national programme for the modernization of the judicial system.

14. Turning to the issue of the treatment of detainees, she said that the overcrowding of prisons was an ongoing problem in Togo. The Government had sought to remedy it by building a new prison in the city of Kpalimé in conformity with international standards, and by providing for separate judges responsible for oversight of detention and freedom, as well as for alternative sentences, in its preliminary draft Code of Criminal Procedure. In addition, it had increased the operating budget of the Department for Prison Administration and Reintegration. Regrettably, however, such measures remained insufficient to improve significantly the conditions of detention.

15. According to article 52 of the Code of Criminal Procedure, custody was limited to 48 hours, renewable once with the authorization of the Public Prosecutor, except in the case of drug-related or serious or complex offences, in which custody could last up to eight days. Given the difficulties involved in enforcing such rules, the Code of Criminal Procedure allowed the Public Prosecutor to make unannounced visits to detention centres in order to release persons who had been detained beyond the stated limits. Similar provision

had been made for visits by the International Committee of the Red Cross and the National Human Rights Commission. Lastly, the Government had provided, by decree, for the general inspection of investigation centres and the penalization of officials who violated the law in respect of periods of detention and custody.

16. Under the Constitution, all Togolese citizens could move freely throughout the national territory. While the Constitution also provided for the right of all citizens to a fair trial and equality before the law, poor infrastructure and an insufficient number of judges hampered implementation of that provision. The Government had therefore recently undertaken to modernize the judicial system. As part of those efforts, a minimum of 20 judges and a number of clerks had been hired annually since 2007 and a training centre for judges and court officers had been established in 2010. Regrettably, although legal aid was guaranteed by law, no funds had been earmarked for it. The fees of legal counsel assigned to indigent accused were included in the criminal justice expenditures.

17. The freedom of religion was enshrined in article 25 of the Constitution. As for the freedom of expression, which was protected by the new Press Code, the Government had revised the statute and mandate of the High Audio-visual and Communications Authority (HAAC) in 2005 and 2009 with a view to improving its effectiveness. The freedom of association was also provided for in the Constitution; to be recognized, an association must first submit the necessary documentation to the Ministry of Territorial Administration, Decentralization and Local Communities. While the Constitution set down the principle of freedom of assembly, in practice, the need to respect such freedom must be reconciled with the need to preserve the public peace. On the basis of a consensus among various political actors and human rights organizations, a draft law had recently been adopted which set out the conditions for exercising the right of peaceful assembly and protest on the public highway or other public places.

18. Turning to the issue of rights of persons belonging to minorities, she said that ethnic and religious minorities had the right to practise their religions, to give open expression to their cultural lives and to use their own language. The official language in Togo was French. To date, the Government had not received any special demands from groups claiming to be minority groups who considered themselves debarred from the enjoyment of their rights for those reasons.

19. The Government, in collaboration with the National Human Rights Commission, the OHCHR Country Office in Togo and civil society, had taken steps to disseminate information about the provisions of the Covenant through training workshops on international human rights instruments and awareness-raising campaigns on universal freedoms.

20. **The Chairperson** invited queries from the Committee on questions 1 to 15 in the list of issues (CCPR/C/TGO/Q/4).

21. **Mr. Salvioli** said that it was regrettable that despite the training organized for public officials, lawyers and judges since the State party's submission of its third periodic report, the provisions of the Covenant had still not been directly invoked by any parties to proceedings or directly applied by any of the country's courts. He would like to know what steps the reporting State had planned to remedy the situation.

22. While welcoming the 2005 legislation aimed at bringing the Truth, Justice and Reconciliation Commission into line with the Paris Principles, he said that the reduction in the Commission's operating budget since 2008 was a cause for concern, as lack of funds would necessarily reduce its scope of activity. Furthermore, information had been received according to which the reporting State did not always take into account the opinions of the Commission.

23. Turning to question 7 on the list of issues, he enquired as to the practical steps being taken by the State to effectively criminalize torture in the Criminal Code, a point that had already been raised in the 2006 concluding observations of the Committee against Torture. It was important to recall that when States ratified an international agreement, they committed to making the agreement immediately effective; otherwise, they were considered not to be in compliance.

24. He welcomed the information provided by the State party on granting non-governmental organizations (NGOs) access to detention centres. It would be interesting to have a full account of any cases in which such visits were not allowed, for instance, the 19 people being held by the Agence Nationale de Renseignement (National Intelligence Agency), in

which visits by family and lawyers were not permitted. The reporting State should clarify what steps had been taken to remedy the situation and whether it was investigating the threats received by the detainees' spouses following a protest they had held. With regard to the death of Kossi Koffi in March 2010 following his transfer to a Lomé civil prison after eight days of custody, reportedly as a result of torture at the hands of the authorities, it would be useful to learn whether the alleged perpetrators had been prosecuted. The penalties imposed for acts of torture as described by the reporting State seemed mild and of an administrative nature. Furthermore, according to information received from NGOs, allegations of torture had not led to the initiation of proceedings. He would be grateful for details of any progress made in that regard.

25. Noting the legislative amendments that had been made in respect of minors and their detention, he said that the Committee had been informed that only the administrative division of Lomé had judges specially assigned to minors and separate holding facilities for minors. He would like to know whether that was still the situation and, if so, how the reporting State planned to change it. He had similar questions regarding the issue of overcrowded prisons, about which the Committee had already expressed concern in its concluding observations on Togo's third periodic report.

26. **Mr. O'Flaherty** praised the delegation for the quality of its self-criticism, which was an unusual and good practice that other States might emulate. The quality of the submissions by NGOs and the National Human Rights Commission was also impressive. Addressing questions 4 and 5 in the list of issues (discrimination against women and violence against women), he said that although draft legislative responses were being developed, it was difficult to tell when a law would actually take effect. Information on the causes of the delay would be welcome.

27. Turning to non-legal strategies to support women's place in society, he asked whether women's empowerment programmes were reaching out to women, especially in rural areas. He also wished to know what the Government was doing to raise men's awareness of gender discrimination and inequality, and to educate schoolchildren about gender equality issues.

28. Noting that quotas were in place for the recruitment of women to senior public service positions, he asked how they were implemented and how effective they had been.

29. While it was understandable that the lack of computerization made it difficult for the Government to provide disaggregated statistics on violence against women, it was unfortunate for a State party to have to resort to obtaining such data from non-governmental sources. It would be helpful to understand what the Government could do to strengthen its capacity to gather the necessary disaggregated data.

30. Noting that homosexual activity was criminalized under article 88 of the Criminal Code, he requested information about efforts to repeal that legislation, which contravened the Covenant.

31. Taking up questions 13 and 14 in the list of issues (treatment of detainees), he said that the report by Manfred Nowak, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, highlighted areas requiring attention, namely, an unacceptably low staff-to-prisoner ratio, the division of control over prisons between two different ministries, the delegation of authority to "senior" prisoners over other prisoners and corruption throughout the criminal justice system (A/HRC/7/3/Add.5, paras. 34, 37 and 38). Information on initiatives being taken to address those problems would be welcome. The reporting State should also indicate whether it was true that police were depriving prisoners of their clothing without any valid, security-based justification. Lastly, the one-week initiative allowing the public to visit prisons was a good practice that might be replicated in other States.

32. **Ms. Waterval**, focusing on the 2005 presidential election, asked when the Truth, Justice and Reconciliation Commission would complete its mission and issue its conclusions. Information about any monetary and personnel resources that the Government had allocated for the Commission's investigation into that election would be welcome. She wondered about the status of persons detained in 2005 in connection with election-related events. Details should be provided on any penalties that had been imposed on those political leaders and journalists who had incited ethnic hatred during the 2005 electoral process. What measures had been taken in the aftermath of those events to prohibit all acts of ethnic hatred?

33. In addition, she wished to know how many complaints of torture or ill-treatment had been filed against public officials, whether any officials had been prosecuted for such acts, and what penalties had been imposed, if any.

34. Turning to question 10 (right to liberty and security of the person and imprisonment for debt), she asked how many times opposition activists had been arrested in 2010 and how many of those arrests had been lawful. Could the delegation clarify whether the arrests of Kpatcha Gnassingbé, Augustin Glo'kpon, Jacob Benissan and others had been made pursuant to a lawful warrant? A list of incarcerated opposition activists and sympathizers would also be useful. Lastly, she wondered what steps had been taken to ensure that police respected the 48-hour limit on holding detainees in custody; what complaint mechanisms, if any, were available to those detained illegally for prolonged periods; and what measures had been taken to provide adequate reparations and compensation to such persons.

35. **Ms. Chanet** said that she was pleased about the abolition of the death penalty but surprised that the State was claiming the Covenant had not been invoked before the courts. There was evidence that the Covenant had indeed been invoked at times by attorneys, but that the courts had paid it no heed. She wished to know why there were no references to the Covenant in judicial rulings.

36. She also enquired about progress in reforming the Constitutional Court, which had been envisaged under the Global Political Accord signed in 2006.

37. Referring to article 88 of the Criminal Code, which penalized homosexual acts, she noted that it remained in force despite plans to remove it, and asked whether there were any pending prosecutions under that article. She was sceptical about the effectiveness of a proposed plan to recommend monogamy rather than prohibit polygamy and would appreciate further information on the Government's thinking in that regard.

38. Regarding torture and article 9 of the Covenant, she said that the State party seemed to have made little progress in incorporating the definition of torture into its law and defining the punishment of the specific crime of torture. Mr. Nowak's report referred to a Ministry of Justice circular allowing persons detained during a preliminary investigation to have access to a lawyer after 24 hours, for a duration of 15 minutes. She asked why that important albeit insufficient provision had not been enacted into law, and whether it applied to all detainees, without exception, including those held by the National Intelligence Agency. Furthermore, the issue of police custody was governed by the Public Prosecutor's Office, which did not meet the criteria for "independent" authority set out in the Covenant. She wished to know whether there was a plan to assign judges responsibility for overseeing police custody rather than the Public Prosecutor's Office. Lastly, she would be grateful if the delegation could explain how some debtors had been mistakenly jailed even though the Public Prosecutor's Office oversaw police custody.

39. **Ms. Motoc** enquired about reports that the Commission set up to investigate the events of 2005 had not worked effectively and had received no Government financing to carry out its mandate. According to NGO sources, high-level Government officials, including the President of the National Assembly, had denied that those events had ever occurred. Could the delegation comment on those matters?

40. She requested information on efforts to eradicate female genital mutilation, on customary law as it related to the status of women, and on any measures taken to limit the power that tribal chiefs exercised in that regard under customary law. On the topic of arbitrary detention and torture, she cited reports by Amnesty International that political activists had been arrested amid fears of torture, and asked for an update on that situation.

41. **Ms. Keller** asked about prison conditions and the situation of female prisoners. She cited paragraph 53 of Mr. Nowak's report, which stated that none of the country's prisons or custody facilities employed any female guards. The Government had indicated that the problem was being resolved through the creation of a special supervisory body under the Ministry of Justice. She enquired about its status and about efforts to ensure that the needs of female prisoners were being met.

42. **Mr. O'Flaherty**, referring to question 15 in the list of issues (treatment of detainees), expressed concern that the State party did not have statistics on the number of people who had died in custody prior to 2010, and that, moreover, there had been no investigations into the causes of any of those deaths.

He asked whether the Government had continued to gather figures on such deaths since 2010 and stressed that all deaths in custody must be properly investigated, even in cases where the family of the deceased claimed it did not want an investigation.

43. **Mr. Bouzid** requested information about the type and amount of damages awarded in cases under review by the National Human Rights Commission.

The meeting was suspended at 4.40 p.m. and resumed at 5.10 p.m.

44. **Mr. Hamadou** (Togo) welcomed Mr. O'Flaherty's recommendation on investigating the deaths of detainees. The Government was aware that the budget of the National Human Rights Commission was insufficient and planned to fight for a substantial increase in funding. Such funding, however, was contingent on the amount of financial aid provided to Togo in connection with its status as a least developed country, among other things.

45. Responding to comments that the State had paid no heed to the recommendations of the National Human Rights Commission, he said that there may have been a misunderstanding because, in the case of the death of Atsutsè Agbobli, there had been an international inquiry carried out under the aegis of the OHCHR Country Office in Togo. However, two different investigations had produced two contradictory reports, resulting in an ambiguous situation. Nevertheless, the Government remained open to further investigations.

46. Suggesting that the criticism concerning the composition of the Truth, Justice and Reconciliation Commission had been unjustified, he said that its composition had been decided under the aegis of the OHCHR Country Office, through a consultative process that had included citizens, but not the Government. Members of civil society organizations had elected their representative to sit on the Commission. It was also incorrect to state that the Government had not provided support to the Commission; in fact, the Commission's budget was larger than that of some Government ministries. The Commission prepared its own budget, but because of budgetary constraints, the Government had only partially met the Commission's funding request. Nonetheless, the Government had provided the Commission with adequate funding to carry out its work. Because it did not meddle in the Commission's work, the Government could not provide details of its internal workings. The Government awaited the Commission's proposals; if they included sanctions, the Government would enforce them under the law. The Commission had reported that it had received nearly 22,000 complaints and was studying them in order to make recommendations to the Government.

47. It was imperative to implement international conventions and treaties, but domestic laws had to be amended in order to incorporate them, especially the Constitution, which was the supreme law of the land. The legal system was therefore being modernized and all laws were being reviewed.

48. He agreed that the domestic law of Togo did not contain a definition of torture. The new Criminal Code would include a definition and prescribe much harsher penalties for specific violations.

49. Imprisonment for civil debt was unacceptable and the Government was combating that practice. All law enforcement officers would have to be made more aware of the need to prevent such detentions.

50. With regard to the reform of the Constitutional Court, the Government had made it a priority to complete the process well in advance of the presidential elections and had used a consensus-based approach to do so.

51. The National Intelligence Agency was, by definition, not subject to the normal judicial process and the individuals detained by it were held pursuant to an order of the judge overseeing those cases. He had personally accompanied civic leaders on a visit to see the detainees in question and the Government had taken note of the recommendations that had been made as a result of the visit. The International Committee of the Red Cross had also visited the prisoners as recently as February 2011. While the Government could not become directly involved in the prison visits, all measures had been taken to ensure that family members and lawyers could visit the detainees. In line with the principle of separation of powers, the Government avoided meddling in the judicial process but did everything to ensure that detainees were held in dignified conditions that conformed to international standards.

52. The Ministry of Justice circular concerning the right of legal counsel to visit clients held in police custody was an anomaly, and had been intended to fill

a void in the law, which originally had no such provision. Prior to assuming his current post in the Government, he had personally lobbied the Ministry to address that oversight. He agreed that legislation was needed to formalize the provisions of the circular and an effort would be made to address the matter.

53. Regarding the number of detainees belonging to the political opposition, he noted that arrests were made on the basis of the acts they had perpetrated rather than their political affiliation. Following the 2010 presidential elections, supporters of both candidates had been arrested for engaging in violence. While political activists had been arrested in Atakpamé, in Ogou Prefecture, and sentenced to imprisonment, all had been set free following an order by the President to ease tensions. All individuals detained in connection with the 2010 presidential elections had since been released.

54. With regard to the events of 2005, some of the individuals being investigated had been released while others remained in detention. While the investigation was nearing resolution, the Government did not possess details for those cases. The principle of the separation of powers forbade the executive branch from inquiring about the actions of the investigating judges.

55. As part of the broader revision of the Criminal Code, the Government would review the texts used in the past to punish individuals for incitement to ethnic hatred and violence and stipulate appropriate sanctions for such acts.

56. With respect to sanctions for impunity, he recalled the 22 undertakings that had been made by the Government and the Global Political Accord which emphasized the need to address the problem of impunity and had led to the creation of the Truth, Justice and Reconciliation Commission. Individuals who were not satisfied with the work of the Commission could seek further redress in the courts. Impunity had caused great harm in Togo and the Government wished to prevent its recurrence.

57. With regard to the complaints filed by the Collective of Associations against Impunity in Togo (CACIT) with the Justice Department, it was the responsibility of CACIT lawyers to use the existing judicial mechanism for resolving such complaints. While a review of legal instruments that were slowing down the judicial process might be warranted, the Government could not ask judges to either expedite or delay the work of the courts without setting a dangerous precedent and imperilling the country's democracy. The legal system needed to remain independent and autonomous from the dictates of the executive branch, which was not the object of those complaints and had no reason to become involved.

58. **Mr. Kodjo** (Togo) said that the inclusion of the definition and prohibition of torture in the Criminal Code had been delayed by the death of the lead expert conducting the review of the draft Criminal Code. Efforts were under way to recruit a new expert in order to conclude the review process. The revised Criminal Code would also address the practice of imprisoning debtors. Measures had been taken to resolve existing cases of such detentions, which occurred during the preliminary investigation phase.

59. In addition to the brigade for minors in Lomé, separate quarters for the detention of minors existed in prisons located in other cities. More generally, the Government's policy was directed at ensuring the reintegration of minors into society, rather than their continued detention.

60. Responding to questions concerning prison overcrowding, he noted that existing prisons had been built during the colonial era and were no longer sufficient, due to demographic trends and growing crime rates. The new prison being built in Kpalimé was expected to relieve crowded conditions in the Lomé civil prison.

61. While prisons were managed by the Ministry of Justice, the guards were supplied by the Ministry of Security. To compensate for the lack of female guards to oversee female inmates, one third of the 500 newly recruited prison guards were female. The new recruits would also improve the ratio of guards to prisoners.

62. Various other steps had been taken since the visit of the United Nations Special Rapporteur on torture, including a week-long initiative that had enabled the public to visit the prisons and make suggestions for improvements. Detainees had participated in various recreational activities during that week and had been able to voice their preferences, which would be taken into account in the coming year as the Government sought to bring greater variety into their lives.

63. Regarding the number of deaths that had taken place in detention, he noted that while no records had

been kept prior to 2010, the number of deaths in detention in 2010 was known. The Government had preferred to be frank about the lack of investigations of those deaths and intended to conduct investigations of such deaths in the future. In particular, overcrowding in the prisons contributed to the spread of diseases and was the cause of many deaths.

64. Regarding the delegation of authority to prisoners over other prisoners, he noted that the practice had been designed to relieve the shortage in prison guards. Authority was delegated to the most trustworthy prisoners, though not necessarily the most "senior", and was limited to periods of four months in order to prevent corruption. One benefit of that practice was that guards on the outside of the prison could be notified by the prisoners of night-time incidents. The solution was imperfect and efforts would be made to improve it over time.

65. In response to questions concerning female prisoners, he admitted that facilities were insufficient for pregnant or nursing inmates. Nonetheless, they were held in better conditions than their male counterparts.

66. In line with its efforts to improve prison conditions, the Government had launched reintegration programmes, which offered prisoners vocational training that would enable them to find work after prison and were designed to decrease recidivism, which contributed to overcrowding in prisons. Commenting generally on the case of Mr. Kossi Koffi, he remarked that prison managers needed to note when incoming prisoners had suffered from inhumane treatment and provide the necessary medical care before admitting them to the prison.

67. While the Public Prosecutor's Office had been temporarily tasked with overseeing detention in policy custody, the new Criminal Code would establish a special court or *juges des libertés et de la detention* (custodial judges) appointed by that court for the purpose of determining whether an individual should be incarcerated.

68. With regard to article 88 of the Criminal Code on homosexual activity, there had been no cases where it had been applied in the 17 years he had served as a judge and no individuals had been put on trial or imprisoned in connection with it.

69. With regard to the detention of minors, he reassured the Committee that, in line with the national policy on the reintegration of minors and the provisions of the Children's Code, a new law would create a separate entity for minors' affairs that would remove minors from the penitentiary system. The brigade for minors would depend on the penitentiary system and consequently on the Ministry of Justice.

70. Regarding the practice of depriving detainees of clothing when in police custody, a great deal of effort had been made following the visit of the Special Rapporteur on torture to change this practice and while detained individuals continued to be searched, they were allowed to keep their clothing.

71. Lastly, he noted that the application of the Covenant's provisions depended on the situation. While there was no hindrance to applying provisions concerning the rights of citizens, domestic law had not yet been harmonized with those provisions calling for penalties.

72. **Mr. Hamadou** (Togo) said that, after legislators rejected language prohibiting polygamy, an awareness campaign had been launched to lay the groundwork for including it in the draft Criminal Code.

73. As for educating the public on the prevention of violence against women, Togolese men had already "woken up" and were fighting hard for the principle of gender equality and against gender-based violence. An awareness campaign designed to reach the general public and another campaign specifically targeting preschool and school-age children addressed the issue of violence against women. In addition, penalties for perpetrating violence against women would be included in the new Criminal Code.

74. In response to the question concerning the denial of the events of 2005 by the President of the National Assembly, the Government had considered it unnecessary to pursue the matter further after the individual in question delivered a public apology for his remarks. Nor had that decision prevented the Truth, Justice and Reconciliation Commission from continuing its investigation of said events.

75. **Mr. O'Flaherty** said that he would welcome a response from the delegation concerning the prolonged delays in the adoption of draft laws. He also wished to know whether the delegation disagreed with the assessment of the Special Rapporteur on torture in

paragraph 68 of his report regarding the respective roles of the Ministry of Security and the Ministry of Justice in the management of the prisons.

76. While welcoming the fact that article 88 of the Criminal Code was not being actively enforced, he insisted that it nonetheless posed a problem. As the Committee had stated in its decision in *Toonen v. Australia*, the very existence of the prohibition on sexual activity between consenting adults of the same sex was the problem, as it created a climate of fear and contributed to the marginalization of those individuals in society. That prohibition should be removed altogether.

77. **Mr. Salvioli** said that while he understood the desire to keep the branches of government separate, the executive branch should still be able to make inquiries with regard to the adoption of certain legislative or judicial instruments.

78. Noting the State's claim that lawyers and family members had been permitted to visit detainees held by the National Intelligence Agency, he asked the delegation to comment on the demonstration held on 12 February 2011 by the detainees' wives, who had complained of not having been able to see their husbands for two years. He would also welcome comments in response to claims that threats had been made against those women.

79. Concerning the detention conditions of minors, he wished to know whether minors were separated from adult inmates at the prisons in Kara, Sokodé, Atakpamé and Mango.

80. He also asked when legislation criminalizing torture would be adopted and how engaging in torture and abuse with impunity would be addressed. Similarly, he wished to know when provisions prohibiting discrimination against women would be adopted and when the provision banning homosexual relations between adults would be repealed.

The meeting rose at 6 p.m.